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Federal Judge Urges U.S. to ‘Jettison the Madness of Mass Incarceration’

By Alan Feuer

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In a speech last week to a group of New York lawyers, a federal judge from Brooklyn assailed the criminal justice system in which he has worked for more than 40 years, saying that the country had to “jettison the madness of mass incarceration” and find an alternative to overly punitive sentencing to address the problem of crime.

The speech by Judge Raymond J. Dearie of the Federal District Court in Brooklyn, at an event sponsored by the New York Criminal Bar Association, may not have struck new ground in its critique of the justice system. But it did put him in the company of other federal judges in Brooklyn who in recent months have come forward with scathing appraisals of things such as mandatory sentencing guidelines and the disregard paid to the socioeconomic roots of crime.

Last month, for instance, Judge Frederic Block wrote an extraordinary ruling saying that courts should pay closer attention to how felony convictions affect peoples’ lives with “collateral consequences” such as ineligibility for public housing and the denial of government benefits. And in March, just before he moved into private practice, Judge John Gleeson used his final decision from the bench to reiterate his own preference for handing down sentences other than prison time to some nonviolent offenders.

All three judges were, in some sense, working in the mold of Jack B. Weinstein, one of the longest-sitting judges on the federal bench in Brooklyn, which is formally known as the Eastern District of New York. In 2011, at age 87, Judge Weinstein went on a walking tour of the Louis Armstrong Houses in the Bedford-Stuyvesant neighborhood before issuing a novelistic ruling in a gang case. The nearly 130-page decision discussed the housing project’s paltry median income, its crumbling infrastructure and the effects of segregation and discrimination on its residents.

“It’s true that there’s a degree to which Eastern District judges have been vocal, but there are a lot more cases out there — they’re just below the radar,” Judge Gleeson said in an interview on Thursday. “I think there is some leadership going on in Eastern where the judges are inclined to speak about these problems. But they’re not the only ones who see them and act on them.”

Judge Dearie, a former prosecutor who once served as the United States attorney in Brooklyn, gave his speech on June 13 at the Loeb Boathouse in Central Park. He started by touching on themes that would not be unfamiliar to most criminal-justice reform advocates.

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He confessed to wanting to “scream out in frustration, sadness and anger” at being forced by Congress to impose mandatory sentences on many defendants who appeared before him. He also said that most criminals are “not evil incarnate” but rather act out of “weakness, need, sometimes desperation.” He added, “So many defendants I see are without schooling, skills, hope or direction, and no term of years is going to change that.”



Judge Raymond J. Dearie of the Federal District Court in Brooklyn, who, in a recent speech, delivered a critique of mandatory sentencing guidelines.

Insisting that his words were not a cry for a broad application of leniency — “Retribution and deterrence have their place in sound sentencing jurisprudence,” he said — Judge Dearie nonetheless questioned the practice of prosecutors and law enforcement officers to gauge their success by how many years a defendant spends in prison.

“Why this love affair in this country with lengthy incarceration, to our great embarrassment as a civilized nation?” he asked, according to a transcript of the speech.

Other judges across the country have also taken issue with the system that they serve. In a case that drew on one of Judge Gleeson’s orders, a federal judge in Oklahoma agreed last September to the early release of a cocaine smuggler who was sentenced to life in prison, ruling that the time

he had already served — 30 years — was sufficient punishment. And Judge Alex Kozinski of the United States Court of Appeals for the Ninth Circuit in California wrote an article last year in the Georgetown Law Journal questioning why so few criminal defendants are acquitted at trial.

“Does this mean that many guilty men are never charged because the prosecution is daunted by its heavy burden of proof?” Judge Kozinski wrote. “Or is it because jurors almost always start with a strong presumption that someone wouldn’t be charged with a crime unless the police and the prosecutor were firmly convinced of his guilt?”

In his own speech, Judge Dearie called on sports stars and entertainment figures to use their celebrity to talk about the problems of the criminal-justice system, suggesting that professional leagues run public service advertisements “during the N.B.A. finals or at halftime during a Giants game.”

“Sports figures and entertainers connect with young people in a way that you and I could never,” he said, according to the transcript. “I confess to doing a slow boil when I hear the money they make, or pay for a beer at a ballgame and contemplate the messages athletes and performers could deliver every day to a rapt and adoring audience. And yet there is mostly silence from these flourishing institutions.”

In general, Brooklyn leans toward the left (five of the six United States congressional districts that include the borough are Democratic). It is also a busy federal district with a diverse and bustling caseload that happens to sit across the river from the media capital of the country, so its judges’ rulings receive a level of national attention.

One reason for the “Eastern District Effect,” as Daniel C. Richman, a law professor at Columbia, called it, could also have something to do with the insularity of judicial life.

“There’s certainly a communal aspect here,” said Mr. Richman, who is also a former federal prosecutor. “Judges tend to lead cloistered lives and to talk to one another more than most. Or maybe it’s just something in the courthouse water.”

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